Court No. 2

Writ Petition No. 1046 of 2002 (S/B)

Jag Mohan Singh …… Petitioner

Vs

State of Uttaranchal and others …… Respondent

Hon. P.C.Verma, A.C.J.
Hon. Irshad Hussain,J.

Heard Sri S.N. Babulkar, learned counsel for the petitioner and learned Standing Counsel.

This writ petition has been filed by the petitioner seeking a writ of certiorari to quash the transfer order dated 31.07.2002 and relieving order dated 5.8.2002 contained in annexure 6 and 7 to the writ petition so far as the same relates to the petitioner.

A perusal of the impugned order dated 31.07.2002 shows that the petitioner's name figures at serial no.6, whereby he has been transferred as District Social Welfare Officer, Bageshwar on administrative grounds. The petitioner assailed this order of transfer on the ground that the petitioner was directly appointed on the post of Assistant District Development Officer(Social Welfare) on 09.11. 1995 by direct recruitment after due selection by the Public Services Commission, U.P. and he was initially posted as Assistant District Development Officer(Social Welfare), Chamoli on 2.1.1996. Therefore, his posting was wrongly shown as District Social Welfare Officer treating him District Social Welfare Officer, Chamoli. The petitioner was never appointed on the post of District Social Welfare Officer. Which is lower in status than the post which the petitioner was holding.

The facts asserted by the petitioner have been duly supported by the documents annexed with the writ petition and rejoinder affidavit, which is on record.

In the counter affidavit filed by the respondents, it has been stated that "in the five districts of State of Uttaranchal, five posts of District Social Welfare Officer in the pay scale of Rs. 8000-13500/- were created against two posts of Additional District Development Officer, Social

Welfare and against three Project Officer of Scheduled Tribes. The petitioner has been transferred in the post of District Social Welfare Officer in the District Champawat in the pay scale of Rs. 8000-13500/-" In the counter affidavit it has not been stated as to whether the petitioner was ever appointed on the post of District Social Welfares Officer or not and his substantive appointment was not o Astt. District Development Officer (Social Welfare), but was appointed as District Social Welfare Officer. Therefore, the allegation made by the petitioner in the writ petition, stands un-rebutted in the counter affidavit.

Form the pleadings and rival contentions of the parties, it is evident that the petitioner was appointed on the post of Astt. District Development Officer(Social Welfare) in the year 1995 and was posted as such initially at Meerut an thereafter after reorganization, he was transferred to Dehradun to be posted anywhere in the districts of Uttaranchal. The service of the petitioner is governed by statutory rules known as the U.P. Harijan and Social Welfare Gazetted Officers Service Rules,1991 and any reorganization or merger of the posts could not have legally been made by any office memorandum such as dated 27.03.2001 contained in Annexure 4 to the writ petition. The State Government lost sight of the status of the petitioner in service and posted him on the post which is subordinate to the post to which the petitioner was substantively appointed. Therefore, the impugned order can not be sustained in the eye of law.

In view of the above, we allow the petition and quash the impugned dated 31.07.2002 and relieving order dated. 5.8.2002 contained in annexure 6 and 7 to the writ petition so far as the same relates to the petitioner and direct the State of Uttaranchal to post the petitioner as Astt. District Development Officer(Social Welfare) in the State of Uttaranchal. The arrears of salary of petitioner on the post of Astt. Distt. Development Officer(Social Welfare) shall be paid within a period of one month from today with 9% interest.

(Irshad Hussain,J.) **(P.C.Verma, A.C.J.)**

Dt. 06.05.2003

A